or that the possessor definitely knew that it was to be so used. It is not enough, unless there are circumstances arousing grave suspicion, that the incomplete apparatus found could be used as part of a still. If that were enough many innocent persons would be put upon their trial because they were in possession of apparatus that might form part of a still.

As the learned Chief Justice (S.S.) pointed out in the case above referred to "Most moderately equipped houses contain fire-places, baths, pots, jugs, drain pipes and other utensils which can be turned into a Heath Robinson still such as is used by most people who offend against the Excise Enactment", but, he went on, "Before the householder is convicted of keeping a still, there must be evidence from which it can be inferred beyond reasonable doubt that these innocent utensils are intended to be used as parts of a still".

On the whole of the facts in the present case I feel, despite the finding of the learned Magistrate, that there was resonable doubt and that the accused must be given the benefit of it.

Accordingly I allow the appeal and set aside the conviction.

The fine must be repaid to the accused.

Exhibits P. 1, P. 2 and P. 3 to be returned to the Appellant.

Appeal Allowed.

KOH KEH CHOI v. PUBLIC PROSECUTOR.

[Appellate Criminal Jurisdiction (Evans, J.) July 14, 1947]

Food Control Proclamation — Operating a rice mill for the purpose of milling padi without a licence — Confiscation of rice mill.

In this case the appellant was convicted as being part owner and manager of a rice mill for operating the rice mill for the purpose of milling padi without a licence. The evidence showed that rice was found in the mill after it had been sealed by officers of the Food Control Department and that appellant was the part owner of the mill and lived in the neighbourhood. On conviction, the learned District Judge ordered the rice mill to be confiscated. The appellant appealed.

Held, (1) that there was no evidence that the appellant personally operated the mill and therefore his conviction was wrong; (2) that evidence should have been taken as to whether the rice mill was a fixture or not before the order of confiscation was made.

Cases referred to :—

(1) *Goh Chong Hin and S. R. M. S. Lechmanan Chetty v. The Consolidated Malay Rubber Estates Limited* 5 F.M.S.L.R. 86.

(2) *Hellawell v. Eastwood* 6 Ex. 295.

CRIMINAL APPEAL.

Leong Yew Koh for the Appellant.

M. G. Neal for the Respondent.

Evans, J. : — In this case the appellant was convicted as being part owner and manager of a rice mill for operating the rice mill for the purpose of milling padi without a licence. The appellant was represented by Mr. Leong Yew Koh who took a great many objections to the proceedings of the Food Control Officers and to the proceedings in the Court below. He contended that the Food Control Inspector's entry on the mill in question was unlawful and also that his previous action in sealing the mill was without any legal authority. These he described as irregularities the consequence of which was to vitiate all subsequent proceedings. The authorities, however, to which he referred were primarily concerned with Court procedure and do not seem to show that the consequence he refers to would follow from the facts he alleges.

The Inspectors visited the mill at 10.05 p.m. on 23rd April, 1947. In a matter of routine inspection this is an unreasonable hour. If on the other hand this visit was for the purpose of uncovering some criminal practice the unseasonable time of calling might be more suitable for the purpose in view. In such a case, however, it is more usual to be provided with the necessary legal warrants in order to effect entry, if necessary. They apparently found the accused in bed. He, however, made no objections to the unreasonable hour at which they chose to come and took the Chief Inspector and his companions into the mill. It may be that the owner was under the impression that the inspectors had a right of entry. This, however, is, in my opinion quite immaterial. When the Chief Inspector with his companions went into the mill house, they were there with the owner's consent, even if the consent were unwilling and mistaken. There is no question whatever here of a forcible entry.

The learned District Judge found that the rice mill had been previously sealed by the Chief Inspector on the 9th April, 1947, and "according to this Chief Inspector and others who accompanied him, all rice grains and dust were removed from the huller before sealing; on the 23rd April when the Inspector again visited the mill he found the original seal gone and a false seal substituted". There is evidence to support this finding. Mr. Leong objected to the evidence regarding the size of the lettering on the 'false seal' and the colour of the wax. It may be that these are largely matters of opinion but they are matters by which such a conclusion is usually proved. The wax

and seals were before the Court for personal inspection and I think the Judge was quite justified in making the finding referred to above. On the other hand he goes on to state "the accused has no explanation to offer as to how a false seal came into being". He was under no obligation to do anything of the kind. The learned District Judge then goes on "the deliberate manner in which the seal was tampered with — reveal the accused as a person of no scruples". There is no evidence whatever that the accused tampered with the seals, and had he chosen to remove the seals it would have been a perfectly innocent act. Government officers can interfere with the property of private persons so far as they are authorised by law and no further. At the time when the seal was first affixed so far as search has been made, and so far as any orders of regulations of the Food Controller have been proved in this Court, the Inspector had no authority whatever to apply such seals. The fact that such authority has since been taken seems to show clearly that at the time no such authority existed. The accused, therefore, as the owner in possession was the one person who might quite rightly remove the seal from his property had he wished. The District Judge seems to have attached undue and mistaken importance to this removal of a seal.

Further evidence was given as to the condition of the huller when opened. The huller only seems to have been inspected. The learned District Judge impliedly found that rice was present in the huller on this occasion as he says "the presence of rice in the huller suggested that the mill has been worked since its sealing on 9.4.47". The prosecution further relied on by no means consistent evidence as to the rice found being fresh rice, but the District Judge made no finding on this point and does not seem to accept it as an established fact that the rice was fresh when found. There is certainly no evidence that on the 9th April the mill was taken down and thoroughly cleaned. The presence of rice in the mill on the 23rd April could not, therefore, clearly prove the subsequent use. Ever supposing the District Judge could on this evidence have found that this mill was used (and he has in fact only found a suggestion of it), it does not prove that the mill was operated by the accused himself. The only evidence against this man on this point is that he is part owner and lives in the neighbourhood. There is no evidence that his work keeps him at his house, nor is it an offence to suffer or permit the use of his mill. It is difficult to justify conviction on the grounds of judgment except on the assumption that the District Judge considered this also to be an offence. In present circumstances it is not improbable that a mill owner might say to a padi grower, you can use my mill at your risk. The whole of the evidence against the accused was merely evidence of opportunity and there is no evidence whatever that he personally operated the mill. On the evidence produced by the Inspector's search I do not think that there was evidence beyond any reasonable doubt that the accused had used the mill.

Objection is also taken to the order of confiscation of the mill. The Food Control Proclamation, under which the accused was prosecuted, gives the Court power to confiscate. Such powers are penal powers and must be strictly construed. The relevant provision refers to "any vehicle and other article". Mr. Leong contends that the words "other article" must be construed according to the *ejusdem generis* rule. That rule is not of universal application, and, moreover, in this same sub-section the word "article" is previously used and is used in a general sense, I think it is used in both places with the same meaning. Crown Counsel contended that this word must be interpreted according to the Proclamation and not according to the law as to fixtures. I have endeavoured to interpret it according to the Proclamation, but I do not think the second proposition follows. "Article" clearly cannot mean land. Mr. Leong's objection to the order of confiscation is that the mill was attached to and had become part of the land. The question of whether an "article" is attached to the land or not imports whether it is a fixture, and, whether one will or no, the rules as to fixtures must be applied. As has been said, the word "fixture" has no definite meaning. In cases like this, regarding machinery such as this mill fixed by screws sunk in a stone foundation the decisions are conflicting. They have been mostly dealt with, however, at length by the Court of Appeal in this country in the case of *Goh Chong Hin and S. R. M. S. Lechmanan Chetty v. The Consolidated Malay Rubber Estates Limited*[1]. In that case the English decision, *Hellawell v. Eastwood*[2], most favourable to the Crown Counsel, does not seem to have been referred to. This case has since been questioned, more particularly in cases between mortgagor and mortgagee. It is the decision of a strong court and it has never been completely over-ruled. In the Malayan case referred to above, most of the English cases were considered at length together with the provision of the local Land Code which does not greatly assist in drawing a line between what is and what is not attached to the land. The head note to this case states that "the English law of fixtures applies in the F.M.S.

Machinery attached to the soil by bolts and nuts is *prima facie* land". The Court clearly applied the English law but the furthest the learned Chief Justice seems to have gone in support of the second proposition is at page 101 where he says :—

> In the Court below it appears to have been assumed that the onus of proving these machines to be fixtures rested on the chargee and Mr. Forwell's evidence seems to be all in favour in the endeavour to afford this proof. This would have been a correct standpoint had all the machines merely rested on the ground with no fastenings. They would then have appeared to be chattels and the onus of proof would rest on those who asserted they had ceased to be chattels but "an article which is affixed to the land even slightly is to be considered as part of the land, unless the circumstances are such as to show that it was intended all along to continue a chattel, the onus lying on those who contend it is a chattel," **Holland v. Hodgson** 7 C.P. at page 335. In this case there is no evidence before the Court which could justify it in finding that this onus had been discharged and the machines were chattels.

The result of the English cases seems to be best summed-up in *Woodfall's* Law of Landlord and Tenant 24th Edition on page 753 which seems to state more generally what the F.M.S. Appeal Court applied to the particular case. It reads as follows :—

> Whether a machine or any other article has been so fixed and attached to the freehold as to become parcel of it, is a question depending on the circumstances of each case, but when once those circumstances are determined, the question will be one of law. The two principal circumstances are: first, the mode of annexation to the soil or fabric of the house, and the extent to which it is united to them, whether it can easily be removed **integre, salve et commode,** or not, without injury to itself or the fabric of the building; secondly, on the object and purpose of the annexation, whether it was for the permanent and substantial improvement of the dwelling, in the language of the Civil Law, **perpetui usus causa,** or in that of the Year Book, **per unprofit del inheritance,** or merely for a temporary purpose, or the more complete enjoyment and use of it as a chattel. If machines be attached slightly by screws or otherwise, so as to be capable of removal without the least injury to the fabric of the building or to themselves, and the object and purpose of the annexation was, not to improve the inheritance, but merely to render the machines steadier and more capable of convenient use as chattels, they do not become "fixtures" or part of the freehold.

The uncertainty as to the meaning of the word "fixture" is due to the large element of fact. No particular evidence on that matter seems to have been taken in this case but as it stands there seems to be good reason for saying that this mill is not an article within the terms of the provision as to confiscation in the Food Control Proclamation. It is a matter however on which a finding would be necessary. In this case moreover the appellant was not the owner and I do not think the fact that he was part owner would satisfy this provision when strictly construed. As however I think the conviction was wrong this point does not directly arise. The result therefore is that the conviction of the Court below is quashed.

Appeal Allowed.

YAU WAH FONG v. NG TAI NEE AND 10 OTHERS.

[Original Civil Jurisdiction (Evans, J.) July 26, 1947]

Japanese Judgments and Civil Proceedings Ordinance 1946 Section 3 — Application for leave to appeal from a Japanese Judgment — Jurisdiction of Court to set aside judgment — Absence of evidence of judgment — F.M.S. Courts Enactment Section 25.

In this case the applicant originally brought a motion for leave to appeal against a Japanese judgment dated the 12th January 2604 whereby the applicant's claim for a declaration was dismissed. Subsequently, the applicant gave notice to the respondents of an amendment of the motion by which he sought to have the judgment referred to set aside. The grounds put forward by the applicant were (i) that the issues before the Japanese Court were incorrectly recorded (ii) that there was no judgment and therefore it is difficult to know what the Japanese Court decided (iii) that there had been a mistake by the plaintiff's principal witness at the trial (iv) that fresh evidence tending to prove fraud had been discovered.

Held, that in the circumstances of the case the proper course for the Court to take was to set aside the Japanese Judgment, which it had power to do under Section 3 (2) of the Japanese Judgments and Civil Proceedings Ordinance.

Cases referred to :—

(1) *Kumar Ramenda Narayan Roy v. Bibhabati Devi and others*
(2) *Abraham v. Dimmock* (1915) 1 K.B. 662.
(3) *Chertsey U. D. .C. v. Binns* (1905) 49 S.J. 223.
(4) *Higginson v. Blackwell Colliery Company* (1915) L.J. K.B. 1189.
(5) *Cross and others v. Gray, Dawes and Company* 5 T.L.R. 377.

MOTION FOR LEAVE TO APPEAL.

F. G. Bryand and E. D. Shearn for Applicant.

Cheang Lee and Ong for Respondents Nos. 1 — 10.

K. G. Suppiah for Respondent No. 11.

Evans, J. : — This motion was originally brought by the appellant for leave to appeal against the Japanese Judgment of 12th Januray, 2604 whereby the applicant's claim for a declaration was dismissed. Since it was filed, notice was given to the respondents of an amendment by which he sought to have the judgment referred to set aside. That notice has been accepted and the matter comes to the Court on that basis. The motion for leave to appeal is not opposed.

This motion is made under section 3 of the Japanese Judgments and Civil Proceedings Ordinance,